

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Dymon, Incorporated  
v.  
Canyon Global Corporation

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Opposition No. 97,715  
to application Serial No. 74/548,490  
filed on July 12, 1994

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J. David Wharton and Constance M. Jordan of Shook Hardy & Bacon,  
L.L.P. for Dymon, Incorporated.

Alan D. Rosenthal of Rosenthal & Osha, L.L.P. for Canyon Global  
Corporation.

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Before Simms, Hanak and Bucher, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Canyon Global Corporation, a Texas corporation, has filed an  
application for registration of the mark "ROUGH STUFF" for "hand  
creams."<sup>1</sup>

Dymon, Incorporated, a Missouri corporation, filed a timely  
notice of opposition on June 5, 1995. As grounds for opposition,

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<sup>1</sup> Serial No. 74/548,490, in International Class 3, filed July 12, 1994, based upon an allegation of a *bona fide* intention to use the mark in commerce. Although the original application was for "skin care products, namely, moisturizers, cleansers and hand creams" in International Class 3, and "analgesic balms" in International Class 5, during the course of this opposition proceeding, applicant amended its goods to merely "hand creams" in Int. Cl. 3 in order to delete the goods for which it no longer intends to use the mark.

opposer asserts that applicant's mark so resembles the previously used and registered trademark "ROUGH TOUCH" for waterless hand cleaner<sup>2</sup>, and the same mark "ROUGH TOUCH" for waterless hand towels impregnated with a chemical cleaner and for liquid hand cleaners (these latter two uses unregistered), as to be likely, when applied to applicant's goods, to cause confusion, or to cause mistake, or to deceive.

Applicant, in its answer, has admitted that it filed the instant application under the intent-to-use provisions of the Trademark Act, but has otherwise denied the salient allegations of the opposition. A trial was conducted and legal briefs have been filed. In July 1999 the parties jointly withdrew their earlier request for an oral hearing, so this case has been decided on the evidence and briefs of record.

The record includes the file of the opposed application; a copy of applicant's responses to opposer's two sets of interrogatories introduced by opposer under a notice of reliance pursuant to 37 C.F.R. §2.120(j)(3)(i); the status and title copy of opposer's subsisting registration; and the testimony deposition of Daniel J. Schrock, Executive Vice President and Chief Operating Officer of opposer, Dymon, Incorporated, with eight attached exhibits. Applicant, Canyon Global Corporation, has presented no evidence.

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<sup>2</sup> Opposer is the owner of Registration No. 1,254,220, issued on October 18, 1983 from an application filed on May 11, 1981, which sets forth dates of first use of November 1980; §8 affidavit accepted and §15 affidavit received.

Opposer develops, manufactures and sells specialty chemical cleaning products for the cleaning and maintenance industries. Among its varied product categories is that of hand and body cleaners. Opposer has used the "ROUGH TOUCH" mark on waterless hand cleaner since the early 1980's, and on disposable, waterless, impregnated hand cleaning towels since 1993.<sup>3</sup> The products contain chemical skin cleaners, mild abrasives, emollients and conditioners, and a fragrance.<sup>4</sup> While it markets over four hundred different kinds of items,<sup>5</sup> opposer contends that these personal, skin care products sold under the "ROUGH TOUCH" mark are among Dymon's most popular lines.<sup>6</sup> Opposer spends over \$100,000 per year on promoting these products.<sup>7</sup> While the precise number is held confidential, the annual sales of its "ROUGH TOUCH" products alone in recent years have been in the millions of dollars.<sup>8</sup>

Even though applicant deleted cleaners from its identification of goods late in this proceeding, opposer argues that its cleaners are related or complementary items to applicant's hand creams. Given that its products contain emollients and conditioners to offset dry, chapped skin, opposer argues that its skin care products are actually a combination

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<sup>3</sup> Deposition of Daniel J. Schrock, pp. 6-7.

<sup>4</sup> Deposition of Daniel J. Schrock, p. 9; Exhibit #4.

<sup>5</sup> Deposition of Daniel J. Schrock, p. 8.

<sup>6</sup> Deposition of Daniel J. Schrock, p. 7.

<sup>7</sup> Deposition of Daniel J. Schrock, pp. 7, 21-22.

<sup>8</sup> Deposition of Daniel J. Schrock, pp. 22, 39.

hand cleanser and hand cream. Opposer also argues in detail that the marks sound alike, look alike and have similar connotations.

In turn, applicant points out that opposer does not use its mark in connection with any hand cream and has no intention to do so, yet hand cream is the sole product for which applicant is still seeking registration.

In discussing the alleged dissimilarities in the marks, applicant argues that because all of opposer's goods sold under the "ROUGH TOUCH" mark contain an abrasive material, the word "rough" is *wholly descriptive* for opposer's goods (applicant's emphasis). Applicant contends that the word "ROUGH" is the only point of similarity in the two marks, and so when the marks are compared in their entirety, they are not really similar enough in sight, sound or meaning to deny registration of "ROUGH STUFF" to applicant.

In light of opposer's reliance on the status and title copy of opposer's valid and subsisting registration for "ROUGH TOUCH," priority of the "ROUGH TOUCH" mark is not an issue. See King Candy Co. v. Eunice King's Kitchen, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974). Even without the pleaded registration, opposer's prior use of the "ROUGH TOUCH" mark is clear from the testimony of Mr. Schrock.

In the course of rendering this decision, we have followed the guidance of In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 1362, 177 USPQ 563, 567-68 (CCPA 1973), that sets forth the

factors which, if relevant, should be considered in determining likelihood of confusion.

Opposer's goods sold under the "ROUGH TOUCH" mark are all products for industrial-strength, hand cleaning. Applicant has narrowed its goods to hand cream. We find that these goods, while not competitive, are nonetheless related. The fact that opposer's goods contain emollients and conditioners means that essential oils or emollients are critical components of both products. This fact further supports a conclusion that the goods of the parties are related. Further, while neither party's channels of trade are in any way limited, it appears from the evidence that both are similarly committed to serving commercial and industrial markets. Given that neither party has any restrictions on its channels of trade, we presume that these goods will be sold in all the same channels of trade to the same class of purchasers. Hence, with totally overlapping channels of trade for closely related goods, the contemporaneous use of nearly identical marks on both types of products would result in a likelihood of confusion.

However, we turn next to a discussion of the similarity of the marks. Opposer argues that the marks look alike, sound alike and have similar connotations. By contrast, applicant contends that the only thing they have in common is the "wholly descriptive" word "rough."

We agree with opposer that the word "ROUGH" is *not* descriptive of its products sold under this mark. However, it is

suggestive of a product containing mild abrasives like pumice. It may also allude to the state of the user's soiled hands prior to using the cleaning products. Or it may even suggest the fact that only a heavy-duty product could successfully take on such a difficult challenge. With that in mind, we look to the similarity of the marks under the sight/sound/meaning trilogy.

Comparing the marks in their entirety as to overall appearance, opposer argues that both marks are made up of two words, where each word contains five letters. As to similar letters, the second words in both marks have the letters "t" and "u" in common, and in that order. However, when "ROUGH STUFF" and "ROUGH TOUCH" are compared in their entirety, we find that the words "stuff" and "touch" are quite dissimilar in appearance. In spite of the fact that the first word in both marks is identical, the differences between the second words is stark enough that one cannot so easily overlook this dissimilarity in overall appearance.

As to sound, opposer argues that each second word repeats the soft vowel sound of the first word, rough. Opposer seems to be arguing that while the words "touch" and "stuff" alone have obvious differences in sound from each other, when combined with the word "rough," they create combined terms having similar cadences, with each arguably having a rhyming pattern with the word "rough." While the vowel sounds in all three words are identical, even when comparing the two marks in their entirety,

we find the pronunciation of the second words, "touch" and "stuff," to be different enough to avoid confusion.

Finally as to connotation, applicant argues that the marks have similar connotations -- connoting "an unpolished, non-subtle approach" or "skin care products that really do the job!" It seems clear that both parties have chosen the word "rough" because of its appeal to individuals who have industrial jobs where one's bare hands get extremely soiled and dirty.

In the vernacular, the term "rough stuff" may suggest aggressive competition in sports, a lack of fine craftsmanship, etc. In the context of applicant's product, it seems to be suggestive of the type of workers who would benefit from using a therapeutic hand cream, or the condition of their hands prior to such use.

The word "rough" in the context of opposer's composite mark ("ROUGH TOUCH") has several clearly suggestive meanings. For example, as contrasted with "Soft Touch"® hand cleaners (without pumice) also sold by opposer, all of its "Rough Touch"® hand cleaner products (with pumice) do contain a mild abrasive. Additionally, such a "heavy duty" or "rough" product seems well designed for extremely soiled or "rough" hands. "Touch" is clearly a word that evokes the use of one's hands - a connotation that seems quite appropriate in a mark used on hand cleaners in the context of each of the above suggestions for likely meanings of the word "rough."

Although there is sufficient information in the instant record for us to agree with opposer that "ROUGH TOUCH" may well represent a significant product line for opposer, we are not convinced that this is a well-known mark, and hence entitled to a broader scope of protection than we would otherwise conclude. In fact, the actual dollar level of annual expenditures for external promotion of the "ROUGH TOUCH" line (i.e., not counting the production and printing costs of putting together catalogues used down through the distribution chain) appears to be around \$15,000. This direct expenditure on marketing the trademark, as a function of the actual dollars of product sales for the year 1998, has to be deemed to be miniscule.

For all these reasons, we find that despite a relationship between the goods, the differences between the marks as to sight, sound and meaning simply outweigh all the other relevant du Pont factors.

Decision: The opposition is dismissed.

R. L. Simms

E. W. Hanak

D. E. Bucher

Administrative Trademark  
Judges, Trademark Trial and  
Appeal Board